

August 5th, 2009

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments,
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Docket ID: CDC-2008-0001

Docket Title: Medical Examination of Aliens - Removal of Human Immunodeficiency Virus (HIV) Infection from Definition of Communicable Disease of Public Health Significance

RIN: 0920-AA26

We support the proposed rule that would lift the immigration ban on visitors and immigrants living with HIV, stop unfair mandatory HIV testing of immigrants and remove references to HIV from the scope of examinations in its regulations. This change will restore the U.S. as a leader in the areas of human rights, equal treatment under the law and public health.

The undersigned organizations, representing civil rights, clinical, immigration, HIV advocacy, public health and other constituencies respectfully submit these comments on the proposed rule by the U.S. Department of Health and Human Services to revise the Part 34 regulation to remove "Human Immunodeficiency Virus" (HIV) infection from the definition of "communicable diseases of public health significance" and to remove references to "HIV" from the scope of examinations in its regulations.

The rationale for our support is as follows:

1. There is no scientific or public health justification for HIV-related restrictions on entry, stay, and residence.

According to the U.S. government's own agencies, HIV is transmitted through bodily fluids, is not airborne and is not transmitted through casual contact.

Public health officials within the United States have acknowledged that there is no public health justification for excluding people with HIV. When

commenting on its own HIV-specific restrictions in 1991, the Centers for Disease Control and Prevention (CDC) stated: "The risk of (or protection from) HIV infection comes not from the nationality of the infected person, but from the specific behaviors that are practiced. Again, a careful consideration of epidemiological principles and current medical knowledge leads us to believe that allowing HIV-infected aliens into this country will not impose a significant additional risk of HIV infection to the U.S. population, where prevalence of HIV is already widespread."¹

From a public health perspective, encouraging people living with HIV to take antiretroviral drugs minimizes the likelihood of developing drug resistance by not skipping doses. In surveys done over the past decade, it appears HIV-specific entry and immigration restrictions have pressured some people to conceal their HIV status from U.S. immigration authorities by not bringing HIV medicines with them on international trips. Repealing this ban will allow HIV-positive travelers to continue their medication uninterrupted.

2. Restrictions on entry, stay and residence based on HIV status are discriminatory.

Since there is no evidence that a travel ban based on HIV status is an effective public health strategy, the differential treatment based on HIV status is discriminatory and not justified. The current policy promotes discrimination against HIV-infected immigrants and causes many immigrants to avoid HIV testing or treatment for fear of deportation and stigma.

This regrettable policy contradicts the historical leadership position of the United States in science, research and development, public health and in the global fight against AIDS. The current policy prevents or hinders people living with HIV, ironically including those who have benefited from the U.S. President's Emergency Plan for AIDS Relief (PEPFAR), from entering the United States and participating in critical meetings that shape global HIV policy and research. Because of this policy, important public health meetings and HIV conferences such as those hosted by the International AIDS Society have not been held in the United States since 1990.

¹ Public Health Service (1991), "*Medical Examination of Aliens.*" 56 Fed. Reg 2,484 (codified at 42 CFR 34).

3. The enforcement of HIV-related restrictions on entry, stay and residence can, and does, violate other human rights.

The implementation of HIV-related restrictions on entry, stay, and residence can also interfere with the rights to life, privacy, liberty, work and as CDC mentions even within their own justification for this rule, the right to protect the unity of the family.

4. HIV-related restrictions on entry, stay and residence can impede effective responses to HIV.

Since the beginning of the epidemic, it has been repeatedly recognized that it is essential to protect the rights and dignity of people living with HIV and to involve them in the response to HIV not only because it is right but because it leads to the most effective responses to HIV. This has been confirmed by governments in the Declaration of Commitment on HIV/AIDS (2001)² and the Political Declaration on HIV/AIDS (2006).³ The Joint United Nations Programme on HIV/AIDS (UNAIDS) established an international task team on HIV-related travel restrictions and found that HIV-related restrictions on entry, stay and residence might be harmful to the public health of both citizens and travelers because they:

- Misdirect resources into intimidating screening and enforcement activities versus using these resources to expand voluntary HIV counseling and testing, prevention, treatment and care;
- Drive HIV prevention and care issues, as well as those *living* with HIV, underground, with negative outcomes for both individual and public health.

5. The costs to the United States taxpayer would not be as high as suggested in the proposed rule.

While we fully support the proposed rule, we also have concerns about the presentation of the cost estimate model. First, this estimate does not explicitly differentiate costs between public and private payers. Significant proportions of these estimated costs would be paid for by other payers

² UN Document A/RES/S-26/2 available on-line at <http://www.un.org/ga/aids/docs/aress262.pdf>

³ See para.20, UN Document A/RES/S-26/2. Available on-line at http://data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARES60262_en.pdf

outside of the U.S. government such as private insurance and contributions by the individual or by his or her sponsor or family. Most immigrants are not eligible to receive means-tested public benefits for five years after their entry into the U.S. All immigrants to the United States must document that they will not be a public charge.

Second, the CDC acknowledges that people with HIV may consume fewer health care resources than immigrants with other conditions. The costs of treating immigrants with other significant health concerns, e.g., heart disease, renal disease, diabetes, are not considered in determining immigration policy for individuals with these conditions and should not be a factor in setting immigration policy for people with HIV.

Finally, we explicitly support the approach to remove HIV testing from the routine medical examination of lawful permanent resident applicants. Mandatory testing for HIV infection should no longer be required as described in the proposed rule. People living with HIV should be allowed to enter the U.S. or adjust to permanent resident status if they meet all other conditions of admissibility. There are clear and important benefits to be accrued from HIV testing. Such testing, however, should not be mandated as part of the routine medical examination for entry into the United States.

For these reasons, we fully support the removal of HIV from the definition of "communicable diseases of public health significance" as well as to remove references to "HIV" from the scope of examinations in its regulations.

If you have any questions or comments, please contact [REDACTED] of Immigration Equality at [REDACTED] or via e-mail at [REDACTED].

Thank you.

Kind Regards,

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